

Neale v DPP - the right to silence, citizens' duties and Coronavirus Regulations

Today, Bindmans LLP client Keith Neale's conviction for obstructing a police officer was quashed by the High Court, sitting at Cardiff. In an important judgment on the right to silence, the legal duties of citizens and the operation of Coronavirus Regulations, Mrs Justice Steyn and Lord Justice Dingemans held that justices at Newport Magistrates' Court had erred in distinguishing Mr Neale's case from *Rice v Connolly* and in finding him guilty of wilfully obstructing a police constable by declining to give his name and address to a police officer.

On 23 April 2020, during the first lockdown, Mr Neale, a 60 year old man, had gone into Newport City Centre to take his key worker friend's car for an MOT test. He was sitting on a bench waiting for the test to be done when he was approached by Police Community Support Officers (PCSOs), who asked him to provide reasons for being in public and to provide his name and address so that a Fixed Penalty Notice (FPN) could be issued. Mr Neale declined to provide this information. A police officer attended the scene and demanded Mr Neale's name and address. He refused and was then arrested and taken to a police station despite the risks involved during the height of the pandemic.

Mr Neale was prosecuted under the original Welsh Health Protection (Coronavirus, Restrictions) (Wales) Regulations ('the Coronavirus Regulations') (<https://www.legislation.gov.uk/wsi/2020/353/contents/made>) for leaving home without reasonable excuse and obstructing a police officer by refusing to provide his name and address so that a Fixed Penalty Notice could be issued to him.

At Newport Magistrates' Court on 25 August 2020, Mr Neale was acquitted of the offence of leaving home without reasonable excuse on the basis that he was homeless at the time of the alleged offence (the prohibition on leaving home does not apply to homeless people) - and in any event, he had a reasonable excuse for being outside because he was taking his key worker friend's car for an MOT test. However, he was convicted of obstructing a police constable - the magistrates' court held there was an implied duty in the Coronavirus Regulations to give personal details to the police when asked, because they considered the Regulations would otherwise be rendered inoperable.

Mr Neale appealed by way of case stated to the High Court. Quashing Mr Neale's conviction, the High Court stated that:

- the Appellant was under no common law obligation to give the police his name and address;

- the right to silence is not reserved only for the innocent and those beyond suspicion (in Mr Neale's case he was, in fact, acquitted of the offence he had been accused of);
- the Appellant was not under a statutory obligation pursuant to the Coronavirus Regulations to give his name and address to the police – the Coronavirus Regulations do not expressly create such an obligation;
- the Appellant's refusal to provide his details foiled the police officer's intention to issue an FPN but did not render the legislative scheme unworkable – if there are grounds for suspecting an offence and the suspect refuses to give their name and address they can, pursuant to section 24 of the Police and Criminal Evidence Act, be arrested, as the Appellant was in this case. It was not therefore necessary to imply an obligation to give details to the police into the Regulations in order for the legislative scheme to operate;
- the Appellant's case was distinguishable from other cases where wilful obstruction had been found – most importantly, none of those cases were about compelled speech;
- the right to remain silent is a particularly important part of our law. In addition, an obligation to give a name and address to the police would engage Articles 6 and 8 of the European Convention on Human Rights;
- the courts should be wary of expanding police powers by implication – where Parliament has chosen to compel speech it has done so expressly;
- the absence of an express obligation to give a name and address in the Coronavirus Regulations powerfully demonstrates that it does not exist;
- the Appellant was not required to give his name and address to the police and it follows that his refusal to do so was not wilful;
- the justices at Newport Magistrates' Court erred in distinguishing the Appellant's case from *Rice v Connolly* in finding him guilty of wilfully obstructing a police constable.

The judgment was a significant restatement of the position in *Rice v Connolly* that there is no general common law duty to assist the police and a person cannot be guilty of wilfully obstructing a police officer by remaining silent when questioned if there is no legal duty to answer questions. There is no such duty under Coronavirus Regulations.

Separately to the issue on appeal before the High Court, Mr Neale's case raises a number of questions about the enforcement of Coronavirus Regulations and may have implications for policing and for those who have been issued fixed penalty notices by the police and/or prosecuted for offences under the Regulations.

Firstly, the case highlights the questionable logic of the criminal justice response to the public health crisis created by the Coronavirus pandemic. Mr Neale was not placing anyone at risk when he sat on a bench lawfully waiting for an MOT test to be

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completed. The risk to public health, and cost to the taxpayer, was brought about by his subsequent arrest, detention and prosecution.

Secondly, it is clear that some police officers have misunderstood and misstated their powers, and citizens' obligations, under the Regulations and at common law. Although the police may, exercising common law powers, ask a citizen to explain why they are outside or ask for their details, there is no explicit or implicit power to require such information under the Regulations or the common law, and no corresponding duty on citizens to provide their details. However, if there are reasonable grounds for suspecting an offence (including an offence under the Regulations) the police may arrest someone if it is necessary to do so in order to ascertain the person's name and address (or for the other reasons set out in section 24 of the Police and Criminal Evidence Act 1984). **Members of the public who refuse to give their details to an officer seeking to issue an FPN should be aware they may risk arrest by doing so.**

Thirdly, reasonable excuses for being outside are not limited to those explicitly set out in the Regulations. Police officers considering whether there are reasonable grounds for believing that an offence has been committed under the Regulations so that an FPN may be issued, or the reasonable grounds for suspicion that are necessary for an arrest, should give proper consideration to any explanation given by members of the public (and what a court might think of it) rather than only recognising those exceptions explicitly listed in the Regulations and/or government guidance. Failure to do so could, in certain circumstances, lead to litigation including for unlawful arrest and false imprisonment. Our view is that the police should also consider that members of the public who decline to answer questions may have reasonable excuses for being outside even if they do not wish to explain themselves to the police. There may be legitimate reasons, for example based on principle or previous negative interactions with the police, for not wanting to do so.

Fourthly, the case is an example of a failure of the CPS review into prosecutions brought under Coronavirus Regulations, which has found that alarming numbers of cases were wrongly charged. In Mr Neale's case, Bindmans brought information to the attention of the CPS that Mr Neale had been homeless at the time of the alleged offences – and yet the prosecution was not discontinued, necessitating the attendance of all parties at court during the pandemic. If cases like Mr Neale's can go as far as being prosecuted to trial and beyond, serious questions remain about the thousands of fixed penalty notices issued by police officers and prosecutions brought under the Single Justice Procedure where suspects/defendants might never have had legal representation.

Keith Neale was represented by Patrick Ormerod of Bindmans LLP and Tom Wainwright of Garden Court Chambers. He was assisted after his arrest by the NGO Big

Brother Watch. His legal team at Bindmans also included Hester Cavaciuti, Sally Gross and Ed Hodgson.